

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Wednesday, April 22, 2026 3:00 p.m.  
Courtroom 17 – Hon. Jane Gaskell  
3035 Cleveland Avenue, Santa Rosa**

**PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.**

**CourtCall is not permitted for this calendar.**

**If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.**

**TO JOIN D17 ZOOM ONLINE:**

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

**TO JOIN ZOOM BY PHONE:**

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell’s Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

**1. 24CV01623, Diazbarriga v. Novavine, a California Corporation**

The Court **GRANTS** Plaintiff Gildardo Diazbarriga (“Plaintiff”) unopposed motion for preliminary approval of class action and PAGA settlement. The Final Fairness Hearing shall be held on Wednesday, **October 7, 2026**, at 3:00 p.m. in Department 17. Moving papers regarding final approval shall be filed no later than **September 4, 2026**.

**I. PROCEDURAL HISTORY**

Plaintiff brought this class action alleging labor code violations against Defendant Novavine, Inc. (“Defendant”) by way of their employment practices and policies. (Memorandum of Points & Authorities [“MPA”], 3:18-26.) After Plaintiff filed the Complaint, the parties conducted formal and informal discovery, including telephonic conferences with Plaintiff, review of written discovery responses, inspection and analysis of documents exchanged, analysis of the parties legal positions, investigation into the viability of class treatment of the Plaintiff’s claims, analysis of potential class-wide damages, research of applicable law, assembly and analysis of data for calculating damages, examining Defendant’s financial documents and the feasibility of collection, and analyzing payroll and other data relevant to Plaintiff, the Class, and the Class Period. (MPA, 3:27-28, 4:1-20.) The parties then participated in an all-day, arms-length mediation with Michael Leb, Esq., ultimately leading to the parties’ agreement to settle their claims. (*Id.* at 4:21-28, 5:1-10.) Now, Plaintiff moves unopposed for preliminary approval of the class action and PAGA settlement.

## II. ANALYSIS

### Legal Standard for Preliminary Approval

A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing. (C.R.C., Rule 3.769(a).) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. (C.R.C., Rule 3.769(c).) The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. (*Ibid.*) The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (C.R.C., Rule 3.769(d).) If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing. (C.R.C., Rule 3.769(e).) Additionally, rule 3.769(f) states that, “if the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.”

The court must determine the settlement is fair, adequate, and reasonable. (C.R.C., Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.) In making this determination, the court considers all relevant factors including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

### Plaintiff’s Motion for Preliminary Approval

Plaintiff moves unopposed for preliminary approval of the Court for the below terms outlined under the parties’ proposed Settlement Agreement attached as Exhibit 1 to the Declaration of counsel Haulk.

#### *a. Class Members*

A Class Member means all persons employed by Defendant as non-exempt employees in the State of California during the Class Period (March 6, 2020, to May 6, 2025), as either a Participating Class Member or Non-Participating Class Member. (Haulk Decl., Ex. 1, Settlement Agreement, §§ 1.4, 1.8, 1.11.)

*b. Settlement*

The Settlement means the disposition of this action effected by the parties' agreement and the Judgment entered by the Court after final approval, for the gross settlement amount of \$200,000.00 to be paid by Defendant. (Haulk Decl., Ex. 1, Settlement Agreement, §§ 1.1, 1.14, 1.18-1.21, 1.43.)

*c. Administrator*

The parties have agreed to ILYM Group as Settlement Administrator and seek approval of administrator expenses payment up to \$10,000.00. (*Id.* at ¶ 10(i), Ex. 1, Settlement Agreement, §§ 1.2.)

*d. Attorney Fees and Costs*

Plaintiff seeks approval of Matthew A. Haulk and Jose M. Herrera of Haulk & Herrera LLP as Class Counsel and an approval of attorney fees will be up to \$70,000.00 and costs up to \$14,000.00. (*Id.* at ¶ 10(k), Ex. 1, Settlement Agreement, §§ 1.5, 1.6, 3.2.2.)

*e. PAGA/LWDA Allocation*

Pursuant to amendment to C.C.P. section 2699(m), civil penalties recovered by aggrieved employees shall be distributed as follows: 65 percent to the LWDA for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 35 percent to the aggrieved employees. The amendments made to section 2699 apply to a civil action brought on or after June 19, 2024; for the PAGA actions brought before that date, the distribution is that 75% of the recovered penalties go to LWDA and 25% go to the aggrieved employees.

This action was filed March 6, 2024, so the amendment does not apply. The PAGA Payment shall be \$10,000.00 with 75% for the LWDA award (\$7,500.00) and 25% for the Individual PAGA Aggrieved Employee award (\$2,500.00). (*Id.* at ¶ 10(l), Ex. 1, Settlement Agreement, §§ 1.33, 3.2.5.)

*f. Class Representative Service Payment*

Plaintiff as Class Representative seeks approval of up to \$7,500.00 for Plaintiff's Class Representative Enhancement. (*Id.* at ¶ 10(j), Ex. B, Settlement Agreement, §§ 1.13, 3.2.1.)

Application

Prior to settlement, the parties engaged in informal discovery and participated in private, arms-length mediation, and determined that the proposed settlement was fair and reasonable. (MPA, 4:21-28, 5:1-10.) Plaintiff argues that the settlement amount and the payment and expenses requested are presumptively fair and reasonable under all relevant circumstances considering Plaintiff's claims. (*Id.* at pp. 11-18.) No party has filed any objection or opposition to the preliminary approval motion. Furthermore, the proposed notice attached to the Declaration of Haulk as Exhibit 2 appears thorough and sufficient to adequately notify class members pursuant to Rule 3.769. For these reasons, the Court will grant preliminary approval.

### **III. CONCLUSION**

Plaintiff's motion for preliminary approval is **GRANTED**. The Final Fairness Hearing is hereby set for Wednesday, **October 7, 2026**, at 3:00 p.m. in Department 17. Moving papers regarding final approval shall be filed no later than **September 4, 2026**. The Court will sign the proposed order lodged with the motion.

## **2. 24CV01910, JPMorgan Chase Bank N.A. v. Lemelle**

Plaintiff JPMorgan Chase Bank, N.A.'s ("Plaintiff" or "Chase") unopposed motion to vacate the dismissal and enter judgment pursuant to Code of Civil Procedure ("C.C.P.") section 664.6 is **GRANTED**. Judgment shall be entered in the amount of **\$5,910.92** (erroneously stated as \$5,460.00 on the Notice of Motion) against Defendant Jazmyne Lemelle ("Lemelle") for the outstanding debt plus costs. Per Evidence Code sections 452 and 453, Chase's request for judicial notice of the party's Stipulated Agreement is **GRANTED**.

### **I. PROCEDURAL HISTORY**

Chase brought this action against Lemelle to collect payment on credit card debt owed on the account number ending in 7438. (Request for Judicial Notice ["RJN"], Exhibit A, ¶¶ 1-2.) The parties entered into a Stipulation Agreement pursuant to C.C.P. § 664.6 (the "Stipulation"), according to which Lemelle agreed to pay Chase to satisfy the debt owed. (*Ibid.*) Lemelle agreed to make the following payments: (1) a minimum of \$455.00 on or before the 1st day of each and every month commencing in September 1, 2025; and (2) a final payment of the remaining balance due in the final month which pays off the Judgment. (*Id.* at Exhibit A, ¶ 4.) If Lemelle satisfied the payments, then Chase would dismiss the matter. (*Id.* at Exhibit A, ¶ 8.) However, if Lemelle defaulted on the payments, then Chase could file a request for a judgment for the full amount of the debt remaining, less payments made under the Stipulation and plus costs incurred pursuant to written declaration submitted by Chase. (RJN, Exhibit A, ¶ 9.) Lemelle paid a total of \$910.00 and then defaulted on the rest of the payments. (Cox Decl., ¶¶ 5-6.) Chase now moves for entry of judgment under the Stipulated Agreement. Despite proper and timely service of the moving papers and notice of hearing date, Lemelle did not oppose the motion.

### **II. ANALYSIS**

#### **Legal Standard**

If parties to a pending litigation agree to sign a written stipulation for settlement of the case, then the court may upon noticed motion enter judgment pursuant to the terms of the settlement. (C.C.P. § 664.6(a).) The court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement if the parties request it. (*Ibid.*) "Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit." (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809, 71 Cal.Rptr.2d 265.)

#### **Chase's Motion**

Chase moves unopposed to vacate the dismissal and moves to enter judgment per the Stipulation and section 664.6. (Motion, p. 3.) Chase asks the Court to enter judgment in the amount of \$5,910.92

(erroneously stated as \$5,460.00 on the Notice of Motion), which includes the principal sum remaining on the debt in the amount of \$5,910.92 and no costs. (Cox Decl., ¶ 7.)

### Application

Chase sufficiently demonstrated that the parties entered into a valid written and signed stipulated agreement, under which Lemelle continues to owe debt after defaulting on payment obligations. Per the motion, the parties' Stipulation, and C.C.P. section 664.6, the Court finds it reasonable to enter judgment in the amount requested against Lemelle, for the remaining debt owed plus costs.

### **III. CONCLUSION**

Accordingly, the motion is **GRANTED**. Judgment shall be entered in the amount of **\$5,910.92** (erroneously stated as \$5,460.00 on the Notice of Motion) against Lemelle for the outstanding debt plus costs. Unless the parties request and appear for oral argument, the Court will sign the proposed order and proposed judgment, which both state the correct amount owed.

### **3. 24CV02507, Black v. General Motors LLC**

Plaintiff Darrell D. Black's ("Plaintiff") motion for attorney's fees, costs, and expenses is **GRANTED** for the reduced amount of **\$25,403.50 for attorneys' fees** and for the requested amount of **\$1,121.25 for costs** against Defendant General Motors LLC ("GM").

### **I. PROCEDURAL HISTORY**

Plaintiff commenced this "Lemon Law" action against GM for claims brought under the Song-Beverly Consumer Warranty Act regarding a 2019 Chevrolet Silverado that was manufactured and distributed by GM. (Motion, 1:3-22.) After a mediation, the parties agreed to settle their claims, under which settlement GM agreed to pay \$175,000.00 to Plaintiff for the "repurchase" of the Silverado plus a civil penalty. (Kornely Decl., ¶ 10.) As a part of the Settlement Agreement, the parties agreed to the following:

"Defendant shall pay Plaintiff attorney's fees, costs, and expenses in an amount determined by the Court, by way of a single noticed motion, to have been reasonably incurred by Plaintiff in the commencement and prosecution of this action, unless the parties agree on the amount of fees, costs and expenses to be paid absent such a motion. The parties agree that Plaintiff is the prevailing party for purposes of the motion. Defendant reserves the right to oppose any fee motion to be filed in this case."

(Kornely Decl., Exhibit 2, ¶ 3(a)(iii).) Plaintiff, as prevailing party, now moves for attorney's fees and pursuant to Civil Code section 1794(d) and the parties' Settlement Agreement.

### **II. ANALYSIS**

#### Legal Standard

##### *Attorney's Fees*

Under Code of Civil Procedure section 1032, attorney's fees are an allowable cost when authorized by contract, statute, or law. (C.C.P. § 1033.5(a)(10)(B).) In general, the “prevailing party” is entitled as a matter of right to recover costs of suit in any action or proceeding. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 606.)

### *Fees Under Song-Beverly Consumer Warranty Act*

Per Civil Code section 1794(d), if the buyer prevails, they may recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action.

### Plaintiff's Fees Motion

Per Civil Code section 1794(d), Plaintiff's counsel requests attorney's fees, costs, and expenses to be awarded as follows:

1. \$23,984.50 for attorney's fees to Consumer Law Experts, PC based on Lodestar calculated rates of fees between \$430.00-\$530.00 per hour dependent on associate or partner experience level. (Kornely Decl., ¶¶ 12-15, 25.)
2. \$2,150.00 anticipated fees for reviewing any opposition filed, preparing a Reply brief, and attending the hearing on the motion for 5 hours at a rate of \$430.00 per hour. (Kornely Decl., ¶¶ 23, 25.)
3. \$1,121.25 in costs and expenses. (Kornely Decl., ¶¶ 24-25.)

Plaintiff's counsel also seeks a Lodestar multiplier enhancement of 2 arguing that it is warranted based on the substantial risks presented in this litigation, the complex legal and factual issues involved, the excellent outcome obtained by counsel, and counsel's skill demonstrated in litigating the matter. (Motion, pp. 8-10.) In sum, Plaintiff seeks an award of fees, costs, and expenses of \$51,240.50 in total. (*Id.* at 11:14-16.)

### Opposition

GM argues that there is no meaningful distinction in this matter from the hundreds of nearly identical Lemon Law cases Plaintiff's counsel is litigating against GM, so the 2.0 multiplier is unreasonable given that this matter involves no extraordinary legal issues, complex motions, or procedural challenges to justify the enhancement. (Opposition, pp. 4, 10-12.)

GM also argues that Plaintiff's counsel failed to show the reasonableness of the rates requested and they should be reduced per the chart included in the Opposition. (*Id.* at 13:5-15.) Furthermore, GM takes issue with some of the costs claimed arguing \$560.68 are improper charges. (*Id.* at 13:17-24, 14:1-8.)

GM's position is that Plaintiff should not be allowed to recover more than \$13,020.00 in fees and \$827.23 in costs. (*Id.* at 14:9-11.)

## Reply

The Reply argues that the Opposition does not comply with formatting guidelines and should be stricken. (Reply, 2:22-27, 3:1-8.)

Plaintiff reaffirms arguments made in the Motion regarding the reasonableness of the fees requested. (*Id.* at pp. 3-7.) Plaintiff also reaffirms the arguments made regarding the reasonableness of the multiplier requested and counsel's hourly rates. (*Id.* at pp. 8-9.) In the declaration, counsel requests \$1,485.00 for time spent reviewing, analyzing, and replying to the Opposition for 3.3 hours at an increased rate of \$450.00. (Reply Kornely Decl., ¶ 4.)

Finally, Plaintiff claims that the proper way to challenge Plaintiff's costs would have been a noticed motion to strike or tax costs in accordance with California Rules of Court, Rule 3.1700. (*Id.* at pp. 9-10.) GM did not timely challenge or move to strike or tax costs per the Memorandum of Costs filed and served with the Court by Plaintiff on October 30, 2025, so Plaintiff argues that GM cannot challenge them now. (*Ibid.*)

## Application

Based on the moving papers, the Court finds Plaintiff is entitled to attorney's fees per Civil Code section 1794(d) and Code of Civil Procedure sections 1032 and 1033.5 as the prevailing party of this action as agreed to by the parties in their Settlement Agreement.

First, the Court does not find any reasonable basis to award the 2.0 multiplier requested because this action does not present any novel or complex issues that are any different from the ordinary issues and claims involved in the hundreds of other Lemon Law actions currently being litigated by Plaintiff's counsel.

Second, the Court finds the hours worked by counsels as well as the rates requested to be reasonable for counsel's partners, associates, and paralegals. As such, the Court will award attorney's fees of \$23,984.50 for fees incurred litigating this action. The Court will also award fees for \$1,419.00 for Counsel Kornely's 3.3 hours spent reviewing, analyzing, and replying to the Opposition at the same hourly rate of \$430.00 and not at the increased rate requested. In total, fees shall be awarded for \$25,403.50.

Finally, costs and expenses shall be awarded for \$1,121.25 as claimed in Plaintiff's Memorandum of Costs, which GM failed to timely move to strike or tax under C.R.C., Rule 3.1700.

### **III. CONCLUSION**

Based on the foregoing, Plaintiff's motion for attorneys' fees is **GRANTED** for the reduced amount of **\$25,403.50 for attorneys' fees** and for the requested amount of **\$1,121.25 for costs**.

Plaintiff shall submit a written order on the motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

## **4. 25CV00913, Evans v. Black**

Self-represented Plaintiff Camilla Evans' unopposed motion to compel Defendants Blacks' responses to Plaintiff's Request for Production of Documents, Set One, is **DENIED** for the reasons stated below.

Plaintiff states that the Request for Production of Documents (Set One) was served on Defendants via their counsel, Wesley J. Leckner, on November 22, 2025, by email, but no responses have been received. (Plaintiff's Decl., ¶¶ 2-3.) Counsel Leckner represents Defendants in this matter and also a separate, related unlawful detainer action regarding which Plaintiff has communicated regularly with Counsel Leckner through email. (Plaintiff's Decl., ¶ 4.) Plaintiff served Defendants' counsel via the same email with the discovery requests. (*Ibid.*)

Defendants filed their demurrer on March 20, 2026, which is set to be heard on July 17, 2026. Under Code of Civil Procedure ("C.C.P.") section 1014, a defendant who has not previously appeared in the action may generally appear by filing a demurrer, which subjects the defendant to the court's personal jurisdiction. (Demurrers, Cal. Prac. Guide Civ. Pro. Before Trial Ch. 7(I)-A.) Per C.C.P. section 1014, Defendants made their general appearance on or about March 20, 2026.

A plaintiff may serve written discovery without leave of court at any time that is 10 days after service of summons on, or appearance by, the party to whom the demand is directed, whichever occurs first. (C.C.P. §§ 2030.020(b), 2033.020(b), 2031.020(b). Here, Plaintiff served the discovery requests before Defendants' appearance. The Court's record otherwise does not show that Plaintiff filed any proof of service of summons demonstrating that service was properly effectuated on Defendants at least 10 days prior to serving them on November 22, 2025.

For these reasons, the Court finds that Plaintiff's service of the discovery requests on Defendants was premature under the Discovery Act. As such, the Court **DENIES** this motion. Defendants shall prepare a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

## **5-6. Bristol v. FCA US LLC**

Defendants FCA US, LLC ("FCA") and CardinaleWay Chrysler Dodge Jeep Ram ("CardinaleWay") Santa Rosa (together "Defendants") demur to the Fifth and Sixth Causes of Action alleged in Plaintiff Jerry Bristol's ("Plaintiff") Complaint is **SUSTAINED with leave to amend** as to the Fifth Cause of Action for Negligent Repair and **OVERRULED** as to the Sixth Cause of Action for Fraudulent Inducement-Concealment.

Defendants' concurrent motion to strike punitive damages in the Complaint is **DENIED**.

### **I. PROCEDURAL HISTORY**

On or about November 17, 2021, Plaintiff purchased a 2022 Ram 2500 (the "Vehicle") from CardinaleWay and entered into a warranty contract with FCA, the manufacturer and distributor of the Vehicle. (Complaint, ¶¶ 4-8.) Plaintiff alleges that the Vehicle was defective and had "engine defects, transmission defects, electrical defects; among other defects and non-conformities," of which Defendants were aware prior to selling Plaintiff the Vehicle. (*Id.* at ¶¶ 12-21.) The Complaint alleges four causes of

action under the Song-Beverly Consumer Warranty Act, a Fifth Cause of Action for Negligent Repair, and a Sixth Cause of Action for Fraudulent Inducement-Concealment. (*Id.* at ¶¶ 40-71.)

Defendants' counsel met and conferred by email and telephonically with Plaintiff's counsel regarding deficiencies in the Complaint, but the parties did not reach a resolution as to these issues. (Shirani Declarations, ¶¶ 2-4.) Defendants now demur to the Fifth and Sixth Causes of Action for Negligent Repair and Fraudulent Inducement Concealment in the Complaint pursuant to Code of Civil Procedure ("C.C.P.") section 430.10(e), and also move to strike the prayer for punitive damages in the Prayer for Relief of the Complaint. Plaintiff opposed both motions, to which Defendants submitted replies. These are considered below.

## II. DEMURRER

### Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid.*)

### Demurrer to Fifth Cause of Action for Negligent Repair

Defendants demur to the Fifth Cause of Action for Negligent Repair arguing that the claim fails as a matter of law because it is barred by the economic loss rule which disallows a plaintiff to claim damages for a negligence of cause of action for economic loss alone without physical injury. (Demurrer, pp. 5-7.) Defendants also argue that Plaintiff failed to plead sufficient facts to show how CardinaleWay deviated from industry standards as claimed, what that conduct was, or when it happened. (*Ibid.*)

Plaintiff argues that the Complaint alleges all essential elements of Negligent Repair and the economic loss rule does not bar all cases involving the negligent performance of services, under *North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 777-81. (Demurrer Opposition, 7:8-28.)

Defendants' Reply emphasizes that any duty to perform services, such as repairs arising from the service and warranty relationship, arises from the parties' agreement and not out of any independent tort duty, so the Negligent Repair does not fit an exception to the economic loss rule. (Reply, pp. 6-7.)

The Complaint alleges that CardinaleWay owed a duty to Plaintiff to use "ordinary care and skill in storage, preparation and repair of the Subject Vehicle in accordance with industry standards." (Complaint, ¶ 61.) However, Plaintiff does not sufficiently allege how this duty arises from an independent tort duty that does not arise out of the repair services and warranty agreement that exists between the parties. Furthermore, Plaintiff failed to state what damages occurred to Plaintiff and how CardinaleWay's alleged breach was the proximate cause of those damages.

For these reasons, the demurrer is **SUSTAINED** with leave to amend as to the Negligent Repair cause.

#### Demurrer to Sixth Cause of Action for Fraudulent Inducement-Concealment

Defendants demur to Plaintiff's Sixth Cause of Action for Fraudulent Inducement-Concealment for failure to constitute a cause of action because: (1) Plaintiff's allegations lack the requisite factual specificity; and (2) Plaintiff failed to plead facts that establish a direct transaction with FCA. (Demurrer, pp. 3-5.)

For the reasons stated below, the demurrer is **OVERRULED** as to this cause. The Court finds that Plaintiff sufficiently alleged facts at the pleading stage to show a transactional relationship between Plaintiff and Defendants giving rise to a duty of disclosure of material facts.

#### *Requisite Specificity for Fraud*

Defendants argue that the Complaint does not plead specific facts against Defendants, but rather relies on conclusory and vague statements to support the fraud claim. (Demurrer, pp. 3-4.)

Plaintiff argues that in cases where a party claims fraud through non-disclosure, it is not practical to allege facts that show how, when, and by what means the disclosure did not happen, per *Alfaro v. Community Housing Improvement System Planning Assn.* (2009) 171 Cal.App.4th 1356, 1384 ("*Alfaro*"). (Opposition, pp. 3-4.) Plaintiff claims the Complaint sufficiently alleges the elements of fraud under this standard. (*Ibid.*)

In the Reply, Defendants argue that Plaintiff's Complaint fails to allege: (1) facts showing FCA's knowledge of the alleged defect; (2) facts showing intentional concealment; (3) that the allegedly omitted information was inaccessible; (4) facts identifying when, where, or in what context FCA was supposedly required to disclose the omitted information; and (5) more than a conclusory allegation as to Plaintiff's reliance on statements or omissions made. (Reply, pp. 4-6.)

The Court finds that, at the pleading stage, Plaintiff has sufficiently pleaded the Sixth Cause of Action for Fraudulent Inducement Concealment and that it is not practical at this stage to state in detail how, when, and by what means Defendants failed to disclose material facts under *Alfaro*.

## *Transactional Relationship*

Defendants cite *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311, in which case the Court of Appeal held that a transactional relationship is necessary between two parties to impose a duty to disclose. (Demurrer, pp. 4-5.) Defendants argue that Plaintiff failed to allege facts to support that there was any duty to disclose material facts to Plaintiff because there was no direct fiduciary or transactional relationship between Defendants and Plaintiff. (*Ibid.*)

Plaintiff argues that FCA provided a warranty directly to Plaintiff which established a contractual relationship supporting a duty to disclose. (Opposition, pp. 4-5.) Furthermore, Plaintiff cites *Bader v. Johnson & Johnson* (2022) 86 Cal.App.5th 1094, 1132, in which the Court of Appeal held that Johnson & Johnson as baby powder manufacturers had a transactional relationship with consumers, which relationship was not interrupted by the distributor of Johnson & Johnson's products because those distributors were not Johnson & Johnson's agents. (Demurrer Opposition, pp. 5-6.) So, the Court of Appeal held that Johnson & Johnson could be held liable for concealing material information about its baby powder from consumers. (*Id.* at 5:26-27.) Relying on this ruling, Plaintiff argues that a transactional relationship can be found here between Plaintiff and FCA. (*Id.* at 5:27-28, 6:1.)

In the Reply, Defendants generally reaffirm arguments for there being no direct, transactional relationship between Plaintiff and FCA. (Reply, pp. 1-4.)

The Court finds that Plaintiff's allegations are sufficient to show a transactional relationship between Defendants giving rise to a duty of disclosure.

### **III. MOTION TO STRIKE**

#### Legal Standard

##### *Motion to Strike*

The Court may strike a pleading that contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (C.C.P. §§ 435, 436(b).)

##### *Punitive Damages*

When a plaintiff claims a breach of an obligation against a defendant, not arising from any contract, punitive damages may be recovered in addition to actual damages when it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice against the plaintiff. (Cal. Civ. Code § 3294.) The code describes "malice" as conduct that the defendant intended to cause injury to the plaintiff, or "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (*Id.* at § 3294(c)(1.)) "Oppression" is defined as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (*Id.* at § 3294(c)(2).) Finally, "fraud" is defined as the "intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (*Id.* at § 3294(c)(3).)

## Defendants' Motion to Strike

Defendants moves to strike the prayer for punitive damages from the Complaint, arguing that Plaintiff did not plead sufficient facts to support allegations of oppression, fraud, or malice under Civil Code section 3294. (Motion to Strike, pp. 2-3.) Defendants also argue that Plaintiff did not plead sufficient facts to identify any specific individual employed by FCA with whom they communicated, nor any advertisement or publication authored by FCA that Plaintiff allegedly saw and rely upon to their detriment. (*Id.* at pp. 3-4.)

## Opposition

Plaintiff cites to *Dhital v. Nissan N. Am., Inc.* (2022) 84 Cal.App.5th 828 as authority to argue that the Complaint sufficiently pleaded enough facts to state a claim for fraud, and as such, punitive damages are available through Civil Code section 3294. (Motion to Strike Opposition, pp. 2-3.) Furthermore, the Complaint alleges Defendants' conscious disregard for the safety of others, which can satisfy the "malice" requirement for a prayer of punitive damages. (*Id.* at pp. 4-5.)

## Reply

In the Reply, Defendants argue that Plaintiff's Opposition misrepresents the law and they re-emphasize that Song-Beverly claims do not provide for punitive damages. (Reply, pp. 2-3.)

## Application

The motion to strike is **DENIED**. Plaintiff's prayer for punitive damages is based on the fraud claim, not the Song-Beverly claims. The Court is overruling the demurrer as to the sufficiency of Plaintiff's fraud claim, so the Court will also deny the motion to strike because the Complaint alleges sufficient facts to support a prayer for punitive damages under Civil Code section 3294.

## **IV. CONCLUSION**

As stated above, Defendants' Demurrer is **SUSTAINED with leave to amend** as to the Fifth Cause of Action for Negligent Repair and **OVERRULED** as to the Sixth Cause of Action for Fraudulent Inducement-Concealment. Defendants' Motion to Strike is **DENIED**.

Defendants shall submit a written order on their motions to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

## **7. 25CV06359, Lumos Communities LLC v. Galloway**

Plaintiff/Cross-Defendant Lumos Communities LLC ("Lumos") seeks a preliminary injunction under Code of Civil Procedure ("C.C.P.") section 526 and California Rules of Court ("C.R.C."), Rule 3.1150 to restrain and enjoin Defendant/Cross-Complainant Galloway Properties LLC and Defendant J. Michael Galloway (together "Galloway") from entering, crossing, occupying, or otherwise interfering with Lumos' real property located along Highway 12 in Sonoma and specifically identified as APN 056-251-015 (the "Lumos Property").

The motion is **DENIED**.

### **PROCEDURAL HISTORY**

Lumos filed the Verified First Amended Complaint (“FAC”) against Galloway regarding the Lumos Property, which Lumos acquired on or about December 24, 2024. (FAC, ¶ 14.) Another owner previously owned the Lumos Property commonly with two other adjacent parcels identified as APN 056-251-012 and 056-251-036 (“Galloway Properties”). (FAC, ¶¶ 16-17.) The previous owner used the Lumos Property for vehicular access and parking and the Galloway Properties for a single-family home; the Galloway Properties has no separate area for parking as a result. (*Id.* at ¶¶ 18-21.) Currently, the Lumos Property provides the only parking for the Galloway Properties. (*Id.* at ¶ 22.) To access the Galloway Properties from Highway 12, there is a driveway over two adjacent single family residential properties (“Neighbor Parcels”) that a driver must use before reaching the Lumos Property for the parking. (*Id.* at ¶¶ 66-67.) Since the house on the Galloway Properties was constructed in 1920, the driveway was the sole means of pedestrian and vehicular access to the properties. (Opposition, 6:3-10.) The previous owner of all three properties failed to pay property taxes on the Lumos Property for many years, which ultimately resulted in a tax sale at which Lumos purchased the Lumos Property in December of 2024. (Motion, ¶¶ 23-25.) Galloway had purchased the Galloway Properties on or about August of 2024. (*Id.* at ¶ 28.)

Lumos engaged in due diligence to determine whether there was any written easement over the Lumos Property in favor of the Galloway Properties regarding the vehicular access and parking, but did not find any. (FAC, ¶¶ 26-27.) Lumos alleges that, on information and belief, Galloway was aware there was no written easement over the Lumos Property and that the lack of written easement was a cause contributing to the previous owner’s failures to sell the Galloway Properties. (*Id.* at ¶¶ 29-30.) Lumos further alleges that Galloway has attempted to resell the Galloway Properties, but have been unsuccessful because of the lack of written easement; even so, potential buyers have parked their vehicles on the Lumos Property in order to access the Galloway Properties to inspect them for purchase. (*Id.* at ¶¶ 36-38.) Lumos does not believe that there is any express easement for Galloway to traverse over the Neighbor Parcels either to reach the Lumos Property. (*Id.* at ¶¶ 68-74.)

In addition, Lumos alleges that Galloway commenced a six-month extensive remodel of the house on Galloway Properties without obtaining proper work permits from the County of Sonoma and during which period the remodeling laborers use the Lumos Property for vehicle access and parking. (FAC, ¶¶ 40-46.) Moreover, Galloway listed the Galloway Properties for renting, so upon discovering this a month after, Lumos sent a Cease-and-Desist letter to Galloway to remind Galloway that there was no easement over the Lumos Property and to demand that Galloway stop using the Lumos Property for vehicle access and parking. (*Id.* at ¶¶ 51-54.) Regardless, Galloway rented the Galloway Properties out to tenants listing that parking was available on the Lumos Property and never responded to the Cease-and-Desist letter. (FAC, ¶¶ 55-65.) Galloway has not asked Lumos to grant access over the Lumos Property, yet Galloway and its invitees continue to use the Lumos Property for vehicle access and parking without permission. (*Id.* at ¶¶ 70-74.)

The FAC alleges causes of action for trespass and injunctive relief against Galloway for the reasons stated above. (FAC, ¶¶ 78-90.) Lumos moves the Court for a preliminary injunction to restrain and enjoin Galloway and all persons acting in concert with them, from entering, crossing, occupying, or otherwise

interfering with Lumos' real property right on the Lumos Property. (Motion, ¶ 1:21-26.) Lumos does not seek a temporary restraining order ("TRO"). (Motion, 1:26, 2:1-2.) Galloway submitted a timely Opposition and requests for judicial notice, to which Lumos responded with a Reply. These are all considered below.

### **REQUEST FOR JUDICIAL NOTICE**

The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) The Court may take judicial notice of "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (C.C.P. § 452(h).) However, while courts may take notice of public records, they may not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Subject to the above limitations, the Court **GRANTS** Galloway's request for judicial notice of the following:

1. Notice of Pendency of Foreclosure and Sale of Property for Delinquent Improvement Bond, recorded on November 18, 1965, as Document No. J 71597 in the official records of Sonoma County, concerning APN 056-251-015 (Vacant Lot);
2. Release of Equity, recorded on October 25, 1974, as Document No. 26585 in the official records of Sonoma County, concerning APN 056-251-015 (Vacant Lot);
3. Order Directing Final Distribution recorded on May 3, 1976, as Document No. R 26592 in the official records of Sonoma County, concerning APN 056-251-015 (Vacant Lot);
4. Decree for Preliminary Distribution, recorded on April 20, 1981, as Document No. 81021152 in the official records of Sonoma County, concerning APN 056-251-015 (Vacant Lot);
5. Order Settling First and Final Account, etc., recorded on May 15, 1981, as Document No. 81027238 in the official records of Sonoma County, concerning APN 056-251-015 (Vacant Lot);
6. Deed in favor of Jan Wood, recorded on May 4, 1989, as Document No. 89040179 in the official records of Sonoma County, concerning APN 056-251-015 (Vacant Lot);
7. Grant Deed, recorded on August 28, 1969, as Document No. L 32944 in the official records of Sonoma County, concerning APN 056-251-036 (formerly APN 056-251-014/-013) (House Parcel);
8. Grant Deed, recorded on June 16, 1976, as Document No. R 35923 in the official records of Sonoma County, concerning APN 056-251-036 (formerly APN 056-251-014/-013) (House Parcel);
9. Grant Deed, recorded on October 25, 1979, as Document No. 35751 in the official records of Sonoma County, concerning APN 056-251-036 (formerly APN 056-251-014/-013) (House Parcel);

10. Conveyance of Real Estate, recorded on September 17, 1970, as Document No. L 78673 in the official records of Sonoma County, concerning APN 056-251-036 (formerly APN 056-251-014/-013) (House Parcel);
11. Release of Equity, recorded on May 23, 1974, as Document No. P 880 in the official records of Sonoma County, concerning APN 056-251-036 (formerly APN 056-251-014/-013) (House Parcel);
12. Quitclaim Deed, recorded on October 27, 1980, as Document No. 80-64938 in the official records of Sonoma County, concerning APN 056-251-036 (formerly APN 056-251-014/-013) (House Parcel);
13. Tax Deed, recorded on September 16, 1981, as Document No. 81853416 in the official records of Sonoma County, concerning APN 056-251-036 (formerly APN 056-251-014/-013) (House Parcel);
14. Grant Deed in favor of Jan Wood, recorded on August 13, 1981, as Document No. 81046298 in the official records of Sonoma County, concerning APN 056-251-036 (formerly APN 056-251-014/-013) (House Parcel);
15. Trustee's Deed in favor of Jan Wood, recorded on August 25, 1994, as Document No. 1994 0100153 in the official records of Sonoma County, concerning APN 056-251-036 (formerly APN 056-251-014/-013) (House Parcel);
16. Realtor.com profile for 17303 Highway 12, Sonoma; and
17. Sonoma County Building Department Property Profile for 17309 Highway 12, Sonoma.

### ANALYSIS

#### Legal Standard for Preliminary Injunction (C.C.P. § 526)

Per C.C.P. section 526(a), an injunction may be granted in these cases:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
2. When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.
3. When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.
4. When pecuniary compensation would not afford adequate relief.
5. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

6. Where the restraint is necessary to prevent a multiplicity of judicial proceedings.
7. Where the obligation arises from a trust.

An injunction cannot be granted to: (1) stay a judicial proceeding in which an injunction is demanded (unless the restraint is necessary to prevent a multiplicity of proceedings); (2) stay proceedings in a U.S. Federal court; (3) stay proceedings in another state; (4) prevent the execution of a public statute for public benefit; (5) prevent breach of a contract other than a contract in writing for personal services of a special, unique, unusual, extraordinary, or intellectual character; (6) prevent the lawful exercise of a public or private office by the person in possession; or (7) prevent a legislative act by a municipal corporation. (C.C.P. § 526(b).)

Under C.R.C., Rule 3.1150, a party requesting a preliminary injunction may give notice of the request to the opposing or responding party either by serving a noticed motion under Code of Civil Procedure section 1005 or by obtaining and serving an order to show cause (“OSC”). A party may also file a complaint for a preliminary injunction, which complaint must be filed first if the action is initiated the same day as a TRO or OSC is sought. (C.R.C., Rule 3.1150(b).)

#### Lumos’ Motion for Preliminary Injunction

Lumos moves for preliminary injunction against Galloway per C.C.P. section 526 on the grounds that: (1) Plaintiff is the owner of the Lumos Property; (2) Defendants have repeatedly trespassed and are likely to continue unless restrained; (3) Such conduct has caused, and will continue to cause, irreparable harm for which monetary damages are inadequate; (4) Plaintiff is likely to prevail on the merits; and (5) the balance of hardships strongly favors issuance of the injunctive relief. (Motion, 2:3-11.)

#### *Lack of Written or Equitable Easement*

Lumos argues that Galloway have neither a written easement over the Lumos Property nor any cognizable claim to an equitable easement. (Motion, 6:20-27.) Lumos argues there is no “catch-all” or “protective” equitable easement that should be allowed here because Galloway knew there was no written easement when acquiring the Galloway Properties and it would otherwise be contrary to California’s public policy favoring the delivery of clear title in a tax deed to allow an equitable easement here. (*Id.* at pp. 10-15.)

Lumos argues that a written easement is required under California law where an adjacent dominant tenement desires to use the servient tenement for vehicle access and parking. (*Id.* at 7:3-12.) So as Galloway does not have a written easement, there is no right to access or park on the Lumos Property. (*Ibid.*)

Lumos also argues there is no equitable easement recognized by California law that is allowable under the circumstances presented in this case. (Motion, 7:15-17.) Lumos argues there was no prescriptive easement through open, hostile, and continuous use adverse to Lumos for five years because before December 2023, the properties were all commonly owned. (*Id.* at 7:18-27, 8:1-3.) Lumos states that an easement by necessity cannot be found here because the Galloway Properties are not landlocked and there is access along the entire edge of the Galloway Properties that abuts Highway 12, and it is irrelevant whether the access is inconvenient or difficult. (*Id.* at 8:4-27, 9:1-3.) Lumos claims there can be no easement by

implication because there was no voluntary transfer from which an intent to preserve or create access can be inferred, but rather the ownership was involuntarily severed based on the failure to pay property taxes. (*Id.* at pp. 9-10.)

### *Balance of Hardships*

On one hand, Lumos argues that Galloway are experienced real estate professionals that knew or should have known that the Galloway Properties lacked an access easement over the Lumos Property, but rather they purchased the Galloway Properties at a very low purchase price and attempted to immediately resell the properties shortly after acquiring them. (Motion, 15:10-18.) As Lumos sent Defendants a Cease-and-Desist letter advising against placing tenants on the Galloway Properties before resolving the vehicle access issue, Lumos argues that Galloway is estopped from complaining the tenants would be harmed by an injunction. (*Id.* at pp. 15-16.) On the other hand, Lumos argues that denying injunctive relief would cause hardship because Galloway's use of the Lumos Property carries multiple risks such as environmental contamination from vehicles and a potential for personal injury claims. (*Ibid.*)

### Galloway's Opposition

#### *Preservation of Status Quo*

Galloway argues that Lumos is not attempting to preserve the status quo, which is what a preliminary injunction is designed to maintain pending a decision on the merits. (Opposition, 9:11-27.) Galloway notes that Lumos concedes the driveway has been the only means of reaching the Galloway Properties for decades, going back to the original construction of the residence on the Galloway Properties. (*Id.* at 9:27-28, 10:1-3.) Galloway claims no exigency here exists that would justify a preliminary injunction reversing the longstanding status quo. (*Id.* at 10:3-11.)

#### *Likelihood of Prevailing on the Merits*

Galloway argues that the evidence establishes at a minimum that Galloway Properties has a vested prescriptive easement for ingress and egress over the driveway because it has been used for more than five years openly, notoriously, and adversely. (Opposition, 10:25-28, 11:1-8.)

The Opposition also argues that even if common ownership negates the prescriptive easement argument, that the December 2023 severance of the common ownership through the tax sale of the Lumos Property gave rise to an easement by implication. (*Id.* at 12:2-17.) Galloway cites to *Rees v. Drinning* (1944) 64 Cal.App.2d 273, 277, in which the Court of Appeal held that three things are necessary to create an implied easement: "(1) A separation of the title; (2) before the separation takes place the use which gives rise to the easement must have been so long continued and so obvious as to show that it was intended to be permanent; and (3) the easement must be reasonably necessary to the beneficial enjoyment of the land granted." (*Ibid.*) Galloway points out that Lumos admits that all three of these elements exist here because the driveway was used for decades before the tax sale separated the title between the Galloway Properties and the Lumos Property and because that driveway over the Lumos Property is the only access to the Galloway Properties. (*Ibid.*)

Galloway argues that an easement by necessity can be found as well because there was no new alternative right away made available, as was supported by Leichnitz' deposition testimony. (Opposition, 14:7-27.) Furthermore, the Galloway Properties are 20 feet above Highway 12, so the prospect of constructing direct access on that hillside would not only be costly, but impractical and not realistically feasible. (*Id.* at 15:8-13.)

Finally, Galloway argues that the circumstances in this case are similar to those in *Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, in which case the Court of Appeal affirmed the trial court's refusal to bar plaintiffs from accessing their property over a driveway on a neighboring defendants' property where the driveway had served as both the plaintiffs' and their predecessors longstanding, sole means of access. (Opposition, 16:2-11.)

### *Irreparable Harm*

Galloway argues that Lumos has neither established any immediate and irreparable injury that will be suffered without a preliminary injunction or that it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief here. (Opposition, 17:18-24.) A judgment for money damages would fully compensate Lumos if Lumos prevails in barring Galloway's access. (Opposition, 17:25-28, 18:1-16.)

### *Injunction Bond*

Finally, if injunctive relief is granted, Galloway argues that it must be conditioned on a mandatory bond of no less than \$113,000.00 (Opposition, 18:17-25.)

### Lumos' Reply

Lumos argues that maintaining the status quo is not applicable in this case because that applies to mandatory injunctions, not prohibitory ones like the one at issue in this matter. (Reply, pp. 7-8.) Lumos reaffirms its arguments that there is no written or equitable easement that can be found under the facts involved in this case. (*Id.* at pp. 8-13.) Lumos also argues that irreparable harm has been established because the threat of continuing trespass might ripen into prescriptive easement rights. (*Id.* at pp. 13-14.)

### Application

First, as both parties agree, no written easement could be found regarding the Galloway Properties' use of the driveway through the Lumos Property for vehicle access or parking, so the Court finds that the evidence supports there is no written recorded easement for the access.

Second, the circumstances do not allow for the Court to find that a prescriptive easement exists here. The Lumos Property and the Galloway Properties were commonly owned prior to 2023, so there was no opportunity for "adverse" use of the driveway over the Lumos Property before then. After the tax sale in 2023, sufficient time has not passed for a prescriptive easement to exist.

Regarding whether an easement by necessity could be found, the Court will follow the Court of Appeal's ruling in *Zunino v. Gabriel* (1960) 182 Cal.App.2d 613, which was cited by Lumos as support.

Under *Zunino*, strict necessity is required, so the fact that another alternative route is too steep, too narrow, or other difficulties exist does not alter that rule for strict necessity *unless* such difficulties cannot be overcome. Here, the Galloways Properties are adjacent to Highway 12, but are 20-feet higher than the highway. A finding could be made that the steepness of the Galloway Properties coupled with the closeness of them to Highway 12 are difficulties that can be overcome, even if it is impractical or too costly, as argued in the Opposition.

The Court does, however, find that an implied easement may exist here because the circumstances satisfy the three elements described in *Rees* that are needed to create an implied easement. There was a separation of title in December of 2023 due to the tax sale, before that separation of title the driveway was used for decades since 1920 continuously and obviously as to show that it was intended to be permanent, and the easement is reasonably necessary because it is the sole means by which the Galloway Properties may be accessed.

Finally, the Court is not convinced that irreparable harm will result if the preliminary injunction is denied, or that it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. The Court does not find the speculative risks of environmental contamination from vehicles or of potential personal injury claims to be immediate, irreparable, or extremely difficult to ascertain the amount of compensation to afford adequate relief to Lumos in the future.

As such, the Court does not find there are sufficient grounds to grant a preliminary injunction.

### CONCLUSION

Based on the foregoing, the motion is **DENIED**. Galloway shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

## **8-9. SCV-267181, Anabi Oil Corporation v. Petersen**

Plaintiff Anabi Oil Corporation (“Anabi”) motion for attorney’s fees and costs is **GRANTED** for the amount of **\$13,689.30 for attorneys’ fees and costs** against Peter Galligan (“Galligan”) incurred to enforce the Court’s Order entered May 15, 2024, (“2024 Order”) incorporated into the Judgment entered on April 11, 2025 (“2025 Judgment”), plus interest on the amount improperly withheld from the time the 2025 Judgment was entered to the date Galligan sent the payment to Anabi.

Accordingly, the Order to Show Cause re: Contempt is **VACATED**. The parties’ requests for judicial notice are **GRANTED**.

### PROCEDURAL HISTORY

On October 22, 2025, the Court granted Anabi’s motion to enforce the 2025 Judgment incorporating the 2024 Order. (Motion, 4:24-25.) The Court also issued an Order to Show Cause re: Contempt (“OSC”) against Galligan, who was ordered to return \$39,775.00 held in his client trust account to Anabi but failed to do so. (*Id.* at 2:19-23.) Galligan ultimately complied with the OSC by sending Anabi’s counsel a check for \$39,775.00. (See Notice of Compliance with Order to Show Cause filed January 13, 2026.) Anabi claims that

Galligan did not respond to Anabi's request for payment of its attorney fees and interest for improperly withholding these funds voluntarily. (Motion, 2:24-26.)

Anabi now moves for the Court to award Anabi reasonable attorneys' fees and costs in the amount of \$13,689.30 for fees Anabi incurred related to meet-and-confer efforts, drafting and preparing of the enforcement motion, briefing for the OSC, reviewing Galligan's correspondences, court appearances, court reporter and transcript costs, and other related activities. (Motion, 3:1-9.) Though Galligan did not oppose the motion directly, he presented an opposition to the request for fees in his briefing related to the OSC, which is set to be heard simultaneously with the hearing on this instant motion. The Court considers the parties arguments below.

### **REQUEST FOR JUDICIAL NOTICE**

Pursuant to Evidence Code sections 452 and 453, the parties' requests for judicial notice are **GRANTED** for the following items:

1. Certified Reporter's Transcript of the October 22, 2025 (10/22/2025), hearing on Anabi's Motion to Enforce Judgment Entered April 11, 2025 (04/11/2025), Incorporating Court Order Dated May 15, 2024 (05/15/2024); and Request for Order to Show Cause re Contempt Against Patrick Galligan;
2. Minute Order and Order issued following the 10/22/2025, hearing granting Anabi's Motion to Enforce Judgment Entered 04/11/2025, Incorporating Court Order Dated 05/15/2024, and issuing an Order to Show Cause re Contempt Against Patrick Galligan;
3. Galligan's Compliance with the November 21, 2025 Court Order;
4. Notice of Entry of Judgment which contains the April 14, 2026 Judgment, the May 15, 2024 Order, and proofs of service;
5. The December 12, 2024 Judgment;
6. The Petersen's Notice of Galligan's Satisfaction of the December 12, 2024 Judgment; and
7. Order Staying December 12, 2024 Judgment.

### **ANALYSIS**

Anabi mainly cites to C.C.P. sections 664.6 and 685.040 in support of the fees motion. (Motion, pp. 6-8.) Section 664.6 allows a court to retain jurisdiction over the parties to enforce their settlement until it is performed in full. Section 685.040 entitles a judgment creditor to reasonable and necessary costs incurred as a result of enforcing a judgment. Anabi seeks a total of \$13,689.30, which amount includes \$10,180.50 in attorneys' fees and \$3,508.80 in costs and is supported by billing records submitted with the Motion. (Daneshi Decl., ¶ 10, Exhibit E.) Anabi's counsel requests to be awarded at an hourly rate of \$485.00 for attorney work and \$150.00 per hour for tasks performed by firm staff. (*Id.* at ¶ 11.)

Though Galligan did not file an opposition to the Motion, he requests that the OSC be vacated due to his compliance with the Court's order on October 22, 2025, and requests that the fees motion be denied. (Opposition to OSC, 1:20-24.) His arguments rests on his claim that Anabi's motion is based on a finding of Contempt which cannot be found here because he has complied with the order by paying Anabi. (*Id.* ta pp. 4-8.)

In Anabi's briefs filed in connection with the OSC, Anabi makes similar arguments as made in the fees motion for why the Court should award fees that were incurred as a result of enforcing the Court's judgment entered against Galligan that he failed to previously comply with. (In re OSC: Brief Filed on Behalf of Anabi Oil, pp. 4-6.)

The Court finds that Galligan's refusal to pay the amount order by the Court necessitated Anabi's enforcement motion. Galligan's later compliance does not change that Anabi incurred fees and costs as a direct result of Galligan's failure to initially comply with the 2024 Order and 2025 Judgment. Anabi has presented sufficient basis under C.C.P. sections 664.6 and 685.040 to demonstrate that Anabi is entitled to fees incurred as a result of enforcing the judgment as well as interest owed for the total amount improperly held from the entry of the 2025 Judgment to the date Galligan paid Anabi. Thus, the Court will grant the motion in its entirety. Accordingly, the OSC will be vacated as well due to the resolution of the contempt issue.

### CONCLUSION

Anabi's motion for attorneys' fees and costs is **GRANTED** for the amount of **\$13,689.30 for attorneys' fees and costs** against Galligan incurred to enforce the 2024 Order and 2025 Judgment, pursuant to C.C.P. sections 664.6 and 685.040, as well as interest owed for the improper withholding of the funds owed. As a result, the Order to Show Cause re: Contempt is **VACATED**. Anabi shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with California Rules of Court, Rules 3.1312(a) and (b).

**THE BELOW TENTATIVE RULING IS ISSUED BY JUDGE CHRISTOPHER M. HONIGSBERG AND ANY REQUEST FOR ORAL ARGUMENT WILL BE HEARD BEFORE HIM IN DEPARTMENT 17**

## **10. SCV-268396, Friends of the South Fork Gualala v. California Department of Forestry and Fire Protection**

**Motion for Attorney's Fees GRANTED** for a reduced amount as follows: attorney fees of \$440,301.75 for the merits litigation and \$63,000 for the fees phase, plus the full requested paralegal and law clerk fees of \$8,720.

### Facts

Petitioner filed this action seeking a writ of mandate setting aside the approval (the "Approval") by Respondent California Department of Forestry and Fire Protection ("Respondent," "CDF" or "CalFire") of

Timber Harvesting Plan 01-20-00203-SON (“THP”) submitted by Real Party in Interest (“RPI”) for harvesting 267 acres of redwood forest along the South Fork of the Gualala River (“the Project”).

On June 14, 2023, the Court entered its judgment, granting the petition in part and denying it in part. As explained in the Court’s order on the merits, attached to and incorporated into the judgment, the Court granted the petition with respect to the analysis of impacts on sedimentation, impacts on biological resources, impacts on cultural resources, cumulative impacts, and analysis of alternatives. The Court denied the petition with respect to the claim that the late publication of the full 87 pages of official responses (the “Official Response”) rendered the responses defective or improper to consider or otherwise violated CEQA. The Court also issued the writ of mandate ordering Respondent to set aside the Approval and file a return specifying the steps taken to comply with the writ, adding that the Court retained jurisdiction to determine compliance with the writ. The Court also stated that it retained jurisdiction to consider Petitioner’s claim for attorney’s fees and costs pursuant to CCP section 1021.5.

Despite prevailing on the core of the substantive claims that Respondent violated CEQA, Petitioner filed an appeal of the judgment. Petitioner claimed that this Court, in its ruling on Petitioner’s requests for extensions and disability accommodations pursuant to California Rule of Court (“CRC”) 1.100, denied Petitioner a full and fair opportunity to litigate its claim that the Official Response was invalid.

With appellate proceedings pending, Respondent filed a return and the Court in September 2023 issued an order discharging the writ. Petitioner challenged that order, however, and ultimately the parties entered a stipulation to discharge the writ, agreeing to an order discharging the writ but also stipulating that this Court retained jurisdiction to take additional actions if the court of appeal directed it to do so.

Eventually, the court of appeal affirmed this Court’s judgment in full. The remittitur was filed on April 1, 2025. The court of appeal ordered Respondent to recover costs on appeal.

### **Motion**

Petitioner moves the Court for an award of attorney fees and costs pursuant to Code of Civil Procedure section 1021.5, asking for \$2,560,197.50. Petitioner includes with its opening brief (“Opening Brief”), the declaration (“Counsel Dec.”) its attorney, Daniel P. Garrett-Steinman (“Petitioner’s Counsel”), a second declaration of its attorney (“Second Counsel Dec.”), 44 exhibits to those declarations, and the declaration (“O’Connor Dec.”) of its fees expert, John D. O’Connor (“O’Connor”).

Respondent has filed an Opposition to Petitioner’s Motion for Attorneys’ Fees (“Respondent’s Brief”), along with the declaration (“Smith Dec.”) of attorney Janelle Smith (“Smith”) and the declaration (“Greenfield Dec.”) of expert Gary Greenfield (“Greenfield”). It does not contest Petitioner’s right to recover attorney fees and costs, but they do dispute the amount sought.

RPI has filed its own brief in opposition to the motion (“RPI’s Brief”). Like Respondent, it does not contest Petitioner’s right to recover attorney fees and costs, but they do dispute the amount sought.

Petitioner has filed replies to the opposition briefs. With the replies, it includes declarations of its attorney (“Reply Dec.”) and a declaration (“Yates Dec.”) of attorney Edward Yates (“Yates”), who was not involved in this litigation but who provides testimony regarding his fees and two cases in which he was attorney for the petitioner, referred to as the *Dogwood* cases. Those cases are discussed in the opposition papers and in this ruling.

### **Request for Judicial Notice**

Respondent requests judicial notice of court records from other cases, specifically orders and judgments, as well as briefs regarding motions for attorneys’ fees and costs. These documents, their contents, and their purported legal effect are judicially noticeable, but the Court cannot judicially notice the truth of factual assertions made therein. With this limitation, the Court grants the request.

Respondent also requests judicial notice of some of its own official records, specifically official notices of conformance and inspection for the Lucas Point Timber Harvest Plan Number 1-25-00099-SON which Respondent issued in October 2025. These documents, their contents, and their purported legal effect are judicially noticeable, but the Court cannot judicially notice the truth of factual assertions made therein. With this limitation, the Court grants the request.

### **Right to Fees and Costs in CEQA Actions Under CCP section 1021.5**

Courts have held that environmental concerns are generally important public rights and enforcing them in accord with CEQA will typically support an award under CCP section 1021.5, but not every such lawsuit automatically qualifies under section 1021.5. *Rich v. City of Benicia* (1979) 98 Cal.App.3d 428, 436-437; *Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 558.

CCP section 1021.5 allows a party to seek attorney fees upon a motion if successful in an action which

resulted in the enforcement of an important right affecting public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.

In other words, it applies if the action enforces an important right affecting the public; the action confers benefits on a large group; and the necessity of the action and the financial burden make the award appropriate. See *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311. As the court explained in *Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg* (2012) 206 Cal.App.4th 988, at 992,

“ ‘The doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such

important public policies will as a practical matter frequently be infeasible. [Citations.]’ [Citation.] Entitlement to fees under section 1021.5 requires a showing that the litigation: ‘(1) served to vindicate an important public right; (2) conferred a significant benefit on the general public or a large class of persons; and (3) [was necessary and] imposed a financial burden on plaintiffs which was out of proportion to their individual stake in the matter.’ [Citation.]” [Citation.] In short, section 1021.5 acts as an incentive for the pursuit of public interest-related litigation that might otherwise have been too costly to bring.’ [Citation.] [¶] ‘It is well settled that the private attorney general theory applies to an action to enforce provisions of CEQA.’ [Citations.]” [Citation.]

The award is generally in the sound discretion of the trial court, and the decision will not be overturned unless clearly wrong. *Gregory v. State Bd. Of Control* (1999) 73 Cal.App.4th 584, 598; *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 754.

#### “Important” Rights

Courts have some discretion in determining what rights are “important” under section 1021.5. *Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles* (1979) 23 Cal.3d 917, 935. Logically, courts have held that environmental concerns are generally important public rights and enforcing them will generally support an award under section 1021.5, but not every such lawsuit automatically qualifies under section 1021.5. *Rich v. City of Benicia* (1979) 98 Cal.App.3d 428, 436-437.

#### Benefit to a Large Class or the General Public

Whether the lawsuit conferred a benefit on the general public or a large class is a slightly different issue, but it logically requires similar analysis. *California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 749; *Woodland Hills, supra*, 23 Cal.3d, 939-941. A lawsuit enforcing the EIR requirement and thus promoting public participation by allowing people to voice concerns in the EIR process was held to confer a benefit on the public at large, or a large class. *Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 558. Where a CEQA lawsuit does not lead to public participation, however, the result may be found not to benefit a large class, as in *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892.

Ultimately, the court must also keep in mind that the ultimate mandate of CEQA is “to provide public agencies and the public in general with detailed information about the effect [of] a proposed project” and to minimize those effects and choose possible alternatives. PRC 21061. The public and public participation hold a “privileged position” in the CEQA process based on fundamental “notions of democratic decision-making.” *Concerned Citizens of Costa Mesa, Inc. v. 32<sup>nd</sup> District Agricultural Association* (1986) 42 Cal.3d 929, 936.

#### Financial Burden of Enforcement: Necessity of Involvement

The court must also consider the financial burden of the enforcement, or “a comparison of the

litigant's private interests with the anticipated costs of suit.” *California Licensed Foresters Assoc. v. State Board of Forestry* (1994) 30 Cal.App.4th 562, 570. The element is met when the financial burden, therefore, “transcends” the petitioner’s pecuniary interest. *Serrano v. Priest* (1977) 20 Cal.3d 25, 41.

Conclusion: Right to Fees

Petitioner prevailed on the CEQA petition and on the core of the primary issues going to the sufficiency of the THP itself. This Court directed Respondent to set aside and vacate the approval of the THP and file a return specifying the steps taken to comply with the writ.

Moreover, neither Respondent nor RPI in their opposition briefs dispute Petitioner’s right to recover fees and costs. They instead only limit their arguments to the amount.

The Court finds that Petitioner is entitled to an award of attorney’s fees and costs.

Apportionment of Fees Among Respondents and RPIs

It is not clear if Petitioner seeks only a recovery from Respondents or is also seeking to apportion the award against both Respondents and RPI. The motion states that Petitioner seeks the award “against defendant, jointly and severally.” This is in the plural, but is unclear, given that there is a Respondent and the RPI. It also does not discuss apportionment. The Court views this as seeking to apportion some amount of the award. Legal authority supports apportioning the award to both Respondent and RPI.

In the instant case, RPI actively participated in the litigation from the inception of the case and had the most to gain. RPI filed an opposition to the preliminary injunction in December 2021, as well as separately filed objections to evidence and declarations. In addition, RPI filed a sur-reply opposition to the preliminary injunction in January 2022. The Court includes reference to these filings simply to point out that RPI was heavily involved in this litigation since the inception.

Furthermore, RPI was clearly the main beneficiary of the THP. While other parties may have arguably benefited from the THP, the logging of the 267-acres was the business interest and benefit of RPI.

As discussed in the cases cited below, those two factors weigh heavily in determining whether fees should be apportioned to RPI. The Court will apportion 50% of the total to Respondent and 50% of the total to RPI.

As referenced above, well-established authority clearly indicates that under CCP section 1021.5 the Court may apportion fees among the real party and the respondent agency. *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, at 756. The *San Bernardino* court expressly held that where a private real party in interest in a CEQA action promotes a project, shares in the CEQA review, has the most to benefit, and actively litigates the defense of the CEQA petition, it is appropriate for the real party to pay for half of the fees and costs. The court explained,

[Real party] contends that the trial court erred in requiring it, as real party in interest, to share in paying the attorney's fees awarded to Audubon. Gold Mountain argues that the County is the entity

which was found to have acted improperly; no action of Gold Mountain was at issue. Accordingly, such an award would have a chilling effect on individuals or business entities seeking to develop their property for fear of becoming financially liable because of a governmental agency's error.

However, Code of Civil Procedure section 1021.5 expressly states a court may ‘award attorneys' fees to a successful party against one or more opposing parties ‘ (italics added). Further, California courts have viewed Code of Civil Procedure section 1021.5 as an affirmation of the private attorney general awards of fees formerly recognized in the federal realm, and thus have recognized federal authority, although no longer viable in the federal realm, to be reliable in interpreting this section. ( *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 934....)

As noted in *Wilderness Society v. Morton* (D.C.Cir. 1974) 495 F.2d 1026, fees granted under the private attorney general theory are not intended to punish those who violate the law but rather to ensure that those who have acted to protect public interest will not be forced to shoulder the cost of litigation. In this case, Gold Mountain was a major party, actively litigating from the inception of the action in order to protect its interests. As the real party in interest, it had the most to gain. When a private party is a real party in interest and actively participates in litigation along with the governmental agency, it is fair for that party to bear half the fees. ( *Id.*, at p. 1036.)

#### **Amount of Fees – Lodestar Approach**

The award should *fully compensate* the claimant for all hours *reasonably* spent. *Serrano v. Unruh* (1982) 32 Cal.3d 621, 639 (*Serrano IV*); *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133. This includes the time spent solely on seeking the fees. *Serrano IV*, 639; *Ketchum*, 1133. Otherwise, as noted above, the award is generally in the sound discretion of the trial court, and the decision will not be overturned unless clearly wrong. *Gregory v. State Bd. Of Control* (1999) 73 Cal.App.4th 584, 598; *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 754. Citing *Serrano IV*, the Supreme Court explained in *Ketchum, supra*, at 1133, “absent circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for all the hours *reasonably spent*, including those relating solely to the fee. [Citation.]” Emphasis original.

As the moving party, the party seeking fees must demonstrate entitlement to the fees and that the amount sought is reasonable. *Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1184 (“*SOURCE*”). As the court stated in *SOURCE*, “[t]he party seeking fees has the burden of proving that the litigation warranted an award of attorney fees and that the hours expended and the fees sought were reasonable.” The determination of the reasonable fees is within the trial court’s discretion. *Ibid.* In the words of *Karapetian v. Kia Motors Am., Inc.* (C.D. Cal. 2013) 970 F.Supp.2d 1032, at 1036, the prevailing party “bears the burden of demonstrating all of the following: ‘the [attorneys’] fees incurred were allowable, were reasonably necessary to the conduct of the litigation, and

were reasonable in amount.” *Karapetian*, citing, *Nightingale, supra*, 31 Cal.App. 4th at 104, quoting, *Levy, supra*, 4 Cal.App.4th at 816.

The court retains discretion to reduce the fee award where fees were not reasonably incurred. *Ibid*, citing, *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (“Padding’ in the form of inefficient or duplicative efforts is not subject to compensation.”); *Gorman v. Tassajara Dev. Corp.* (2009) 178 Cal.App.4th 44, 90-92 (“A reduced [attorneys’ fees] award might be fully justified by a general observation that an attorney...submitted a padded bill or that the opposing party has stated valid objections”). “If the time expended or the monetary charge being made for the time expended is not reasonable under all the circumstances, then the court must take this into account and award attorney fees in a lesser amount.” *Ibid*, citing, *Nightingale, supra*, 31 Cal.App.4th at 104; see also, *Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 815–816. In the words of *Roe v. Halbig* (2018) 29 Cal.App.5th 286, at 311, “[i]n setting attorney's fees “[t]he basis for the trial court's calculation must be the actual hours counsel has devoted to the case, less those that result from inefficient or duplicative use of time.” [Citation.]’

Where a petitioner partly prevails on its claims, the court may award part of the fees requested, reduced to reflect the partial nature of the victory. *Bowman v. City of Berkeley* (2005) 131 Cal.App.4<sup>th</sup> 173, 177-178. As the court recognized in *Bowman*, failure to achieve a complete victory does not necessarily bar recovery of fees and should not necessarily control whether fees are recoverable but may be factored into determining the *amount* of fees awarded. The court should consider if the successful and unsuccessful claims were related, in which case the petitioner may recover the reasonable fees, or if they were unrelated so that the court should reduce the fees by an amount commensurate with the unsuccessful claims. *EPIC v. Cal. Dept. of Forestry & Fire Protection* (2010) 190 Cal.App.4<sup>th</sup> 217, 238. Claims may be unrelated if they involve different claims for relief, legal theories, and facts. *EPIC, supra*, 239. This approach is well established in general. As stated in *Hensley v. Eckerhart* (1983) 461 U.S. 424, at 435-437, discussing federal civil rights litigations, it may be inappropriate or impossible to segregate unsuccessful claims if they are fundamentally intertwined, with common issues of fact, evidence, and analysis, but still ultimately the court has discretion to reduce fees to reflect only a partial success.

In figuring the amount of fees under section 1021.5, courts generally use the “lodestar” approach, basing the decision on the number of hours reasonably expended multiplied by the reasonable hourly rate in the community for similar work. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136; see also *Serrano v. Priest* (1977) 20 Cal.3d 25, 28 (*Serrano III*). The court should consider a wide variety of factors, including the nature of the litigation, the difficulty, the amount involved, the skill, the success, the attorneys’ experience, the importance of the litigation, and the time consumed. *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 638-639; *Stokus v. Marsh* (1990) 217 Cal.App.3d 647, 656-657.

A multiplier in such circumstances may be appropriate. As the Supreme Court noted in *Ketchum, supra*, at 1133, ‘ “A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.” [Citation.]’

As the Supreme Court further explained in *Ketchum*, at 1138, “the purpose of a fee enhancement is primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class. To the extent a trial court is concerned that a particular award is excessive, it has broad discretion to adjust the fee downward or deny an unreasonable fee altogether.” It also noted at 1138 that the trial court is not required to include a fee enhancement for contingent risk, exceptional skill, or other factors, although it retains discretion to do so as appropriate case. The court also pointed out that the party seeking a fee enhancement bears the burden of proof while the trial court should consider the extent to which the attorney and client were able to mitigate the risk of nonpayment, such as where the client has agreed to pay some portion of the lodestar amount regardless of outcome. The court explained that a multiplier will not necessarily result in a windfall or doubling, but that the trial court should take this possibility into account depending on the circumstances and various factors, noting that the trial court “should also consider the degree to which the relevant market compensates for contingency risk, extraordinary skill, or other factors.... We emphasize that when determining the appropriate enhancement, a trial court should not consider these factors to the extent they are already encompassed within the lodestar. The factor of extraordinary skill, in particular, appears susceptible to improper double counting; for the most part, the difficulty of a legal question and the quality of representation are already encompassed in the lodestar.” *Ketchum*, 1138.

In some cases, it is also appropriate to apply a negative multiplier. *San Diego Police Officers Assn. v. San Diego Police Department* (1999) 76 Cal.App.4th 19, 24 (affirming application of a negative modifier of .20 based on the consideration of the factors).

### **Counsel for Petitioner**

Petitioner provides a declaration from Jeffery C. Huffman, M.D. (“Huffman”) with Huffman’s own psychiatric evaluation of Petitioner’s Counsel attached as an exhibit. This states that Huffman diagnosed Petitioner’s Counsel as suffering from bipolar I disorder with manic episodes, suffered manic episodes during five distinct identified periods between July 2022 and August 2025, and that the episodes were most likely a result of the bipolar disorder. He also opines that the symptoms related to the disorder and episodes affected counsel’s “ability to comport himself in a professional manner and to carry out the duties of his role as a lawyer.”

### **Note Regarding Comparisons to Other Cases**

The parties dispute the propriety of comparing the fees sought here to those sought and awarded in

other CEQA litigation. Most notably, Respondent relies on several references to other cases, discussed below, while Petitioner contends that there is no basis for using such comparisons. It contends that there is no legal basis for doing so and that the facts of the cases render such comparisons improper. Petitioner is correct that there are limitations on such comparisons and that it would be improper to use such comparisons strictly or rely entirely on them, but in the end Petitioner's argument is not persuasive.

First, there is a basis for looking to comparisons for general guidance in gauging reasonableness. Such a determination is never clear cut or easy to parse out. This inherently involves a discretionary determination about conduct which itself involves much discretion at all times, leaving much room for vagueness and issues which are difficult to pin down or neatly define. Petitioner is correct that in each case the court ultimately must look at the facts, work, issues, and other circumstances of the case before it, and must not use comparisons as strict determination of an appropriate award. However, because the court must determine what is "reasonable," this necessarily requires a comparison to other cases as a basic guidance on a range of the fees and hours which may typically be expected. Courts can, do, and must use some form of comparison as reasonableness in fees and other issues whenever they must apply a "reasonableness" standard, which in the end refers back to some basic benchmark. Looking to other litigation helps provide such context for a range of fees which could fall within the realm of reasonableness. Ultimately, a determination of whether something is reasonable requires in part a determination that it is reasonable when compared to something.

Second, Petitioner is not correct that there is no legal basis for using other examples as comparison for an indication of the number of hours or fees which may be reasonable. Courts use such comparisons all the time to determine what is reasonable, from determining the hourly rate to determining the total hours or fees claimed, in making decisions on fee awards, and the case law reflects this. In decisions on fee awards, a reasonable hourly rate is generally "that prevailing in the community for similar work." *City of Santa Rosa v. Patel* (2010) 191 Cal.App.4th 65, 69, quoting *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; see also, *Ketchum, supra*, 24 Cal.4th at 1132 (hourly rate used in lodestar calculation is "the basic fee for comparable legal services in the community;"); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 640, fn. 31 (lodestar calculation uses the "comparable salaries earned by private attorneys with similar experience and expertise in equivalent litigation," or "hourly amount to which attorneys of like skill in the area would typically be entitled."); *Children's Hosp. & Med. Ctr. v. Bontá* (2002) 97 Cal.App.4th 740, 783 (the court must determine "reasonable market value" and whether the requested rates are "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work" in the community). The court in *Ketchum*, although focusing more on the rate, used the term "comparable" ten times in its discussion of the reasonableness of the award. The court in *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n11, stated that where an attorney's initial award was 30.3 percent of the benefit the final

fee award was 27.9 percent of the benefit, this was ‘not out of line with class action fee awards calculated using the percentage-of-the-benefit method: “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” [Citation.]’ Although this was in the context of a fee award in a class-action case rather than CEQA litigation, the basic point of using something as a comparison in determining appropriate fees is the same. Although distinct from reasonable attorneys’ fees, determining reasonable enhancement awards for named plaintiffs in class actions has some basic similarities, requiring a determination of any additional time, expense, or other issues which the named plaintiffs faced in the particular case. Yet, in such decisions, courts also look to other cases as indicators of reasonableness. See, e.g., *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807 (comparing the enhancement in that action to one awarded in another action when determining reasonableness).

In the end, the Court finds it appropriate to look to other cases as providing a benchmark or context for guidance in determining a range of reasonableness, but nothing more. The Court, as Petitioner argues, ultimately bases the determination on the hours, work, number and nature of the legal issues, complexity, and other aspects of the specific litigation before it.

#### **Hourly Rate**

Petitioner seeks fees based on an hourly rate of \$600 for attorney time and \$150 for paralegal time. Respondent contends that the attorney hourly rate should be reduced to \$500 but does not challenge the paralegal rate.

Petitioner demonstrates that he has 14 years of experience and participated as counsel in many CEQA actions. Declaration of Counsel in Support of Petitioner Motion for Attorney’s Fees (“Counsel Dec.”), 4-9. In this Court’s view, Petitioner’s Counsel has also demonstrated skill and knowledge regarding CEQA and CEQA litigation, as well as an ability to present coherent and complex legal briefs and analysis. He has also demonstrated throughout this litigation, including on this very motion, that he has the ability to prepare thorough and complete papers, documentation, and discussion. All of this ability generally supports a high hourly rate. At the same time, however, as is well documented throughout this litigation, Petitioner’s Counsel has also frequently demonstrated inability to conduct litigation in a professional or timely manner, or to maintain civility. Petitioner Counsel, in his own papers in support of this motion expressly acknowledges that at times his conduct has been unprofessional and uncivil. There is no dispute on this point whatsoever, with only disputes as to the causes. Regardless of the causes, the Court finds that Petitioner’s Counsel has demonstrated a concerning lack of professionalism in conducting litigation, acting in a timely manner, complying with briefing schedules and hearing schedules, and maintaining civility. This conduct, moreover, is such that it significantly affects the course of litigation and imposes additional burdens on the parties, opposing counsel, and the Court. This, in the Court’s view, generally supports a lower hourly rate.

Petitioner also relies also on the opinion of John D. O'Connor ("O'Conner") that the rate is reasonable, as set forth in O'Connor's declaration ("O'Connor Dec."). O'Connor discusses the specialized, complex nature of CEQA litigation, something of which this Court is well aware and which the Court does not consider to be seriously in dispute. O'Connor points out that RPI's attorney stated, in opposition to the motion for preliminary injunction in 2021, that he charged \$770 an hour plus \$345 an hour for paralegals and that this would, for inflation since, be equivalent to about \$950 an hour.

In addition, Petitioner points to the LSI-Laffey index, which is used to reflect prevailing legal rates in the Washington D.C. ("D.C.") region and which relies on the Consumer Price Index from across the country in order to adjust for inflation. See *Salazar v. District of Columbia* (D.D.C. 2000) 123 F. Supp. 2d 8, 14-15. The court in *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, at 695, affirmed an order regarding attorney's fees from the court in Alameda County and held that it was proper to rely on the Laffey index adjusted for San Francisco Bay Area rates. It noted that to obtain rates for that region, it was proper to adjust the Laffey rates for the D.C. area up by about 9%. At the same time, the court there noted that there are different versions of the matrix or index, and disputes over which is more appropriate. Respondent's expert, Gary Greenfield ("Greenfield") likewise notes in his declaration ("Greenfield Dec.") that the matrix has different versions with disputes over the right one to employ in a given case and that there are problems with relying on it outside of the geographic area for which it was developed because an adjustment based on the local cost of living does not necessarily reflect the actual rates in an area. He contends that those decisions, discussed below, for CEQA actions in this county and Stanislaus County, provide a better basis. In any case this matrix apparently indicates a rate of \$1,019 for attorneys in the Bay Area with 11-12 years of experience. The Court finds that this rate far exceeds the rates of this specific region and is unreasonably high. As a result, while this matrix is of some value in putting the requested rates into perspective, it has little meaningful import here.

Petitioner also cites *Russell v. Foglio* (2008) 160 Cal.App.4th 653, at 658, where the court found an award of fees at a rate of \$300 an hour for a case in Los Angeles to be reasonable. Petitioner notes that the lapse of time since that decision would warrant a higher in rate.

Finally, Petitioner cites the retainer agreement with Petitioner's Counsel, which states that Petitioner agreed a valuation of the attorney time at \$600 per hour.

In contrast, as Respondent argues, fee awards in recent CEQA litigation in this county and one in Stanislaus County in which Petitioner's Counsel was himself involved resulted in awards with rates of \$400-\$500 an hour. A rate of \$400 was awarded in a similar CEQA action in this county, *Forest Unlimited, et al. v. California Department of Forestry and Fire Protection*, SCV-259216, referred to as *Dogwood I* because of the Dogwood THP at issue. The Court reduced the rate from a requested \$500 based on the Court's knowledge of local rates. That action was resolved in 2018. Similarly, in a subsequent related action over

the Dogwood THP project, *Friends of the Gualala River v. California Department of Forestry and Fire Protection*, SCV-262241, referred to as *Dogwood II*, the Court awarded fees at a rate of \$425 an hour for litigation taking place in 2018-2019. Petitioner's Counsel himself litigated the Stanislaus action, *Sierra Club, et al. v. Del Puerto Water District*, CV-20-005193 ("*Del Puerto*"). In that action, the September 2025 decision awarded fees at a rate of \$500 an hour, down from the \$700 rate requested.

Finally, the Court notes that although the current litigation over fees is now in Spring 2026, the work in this litigation was earlier. Most of the work related to this very motion itself was completed by late 2025, with the motion continued from a hearing date in December 2025 due to issues which Petitioner's Counsel raised. The actual substantive litigation in this action took place in 2021 through 2023, with the Court rendering its decision and entering judgment in 2023. Petitioner filed its appeal in 2023, and briefing was concluded in 2024. Moreover, as discussed further below, the court award will not include the fees and costs related to the appeal, so this later litigation is immaterial.

In its reply, Petitioner provides the Yates Dec., in which Yates describes the *Dogwood* litigation and states that his current fees are \$650 an hour for state court litigation and \$800 an hour for federal litigation. This may be so, it may tend to support Petitioner's argument, and the Court considers this information in its analysis. However, this Court does not find this information sufficient to persuade the Court that the rate Petitioner requests is appropriate, for the reasons which this Court sets forth.

In light of the above, the Court agrees with Respondent that the hourly rate claimed for the attorney work is unreasonably high but is not convinced that it should reduce the award to \$500. This is generally consistent with local rates for litigation here, reflects an increase in the recent rates awarded for similar CEQA actions in this county, and is consistent with the recent rates awarded to Petitioner's Counsel himself in September 2025. This is particularly true in light of the fact that, aside from this fee motion, the litigation in this action occurred several years ago, in 2021-2023. Finally, the Court notes the very mixed reflection of the professional conduct and abilities of Petitioner's Counsel. Some aspects of his work, as noted, were consistent with an experienced attorney who could expect to command a higher rate. On the other hand, other aspects of his conduct throughout this litigation are very inconsistent with the level of professionalism necessary to command a high fee. As discussed at other points in this decision, Petitioner's Counsel has demonstrated unreasonable inflexibility, belligerence and lack of civility, and inefficiency. As a result, of the total analysis and circumstances of this case, the Court finds an hourly rate of \$525 to be reasonable.

#### **Number of Hours Claimed**

The number of hours which Petitioner claims is 1,591.3 hours of attorney time, resulting in fees of \$954,750, and 71.5 hours in paralegal time, resulting in fees of \$10,725.

Preliminarily, the Court notes that this is an exceptionally large number of hours, significantly exceeding hours typically claimed or awarded in the CEQA litigation with which this Court is familiar. As

discussed in the briefs, *Dogwood I* involved a lodestar of 305.4 hours and *Dogwood II* 360.1 hours, while in *Del Puerto*, Petitioner's Counsel himself requested only 740.9 hours.

This point is not alone dispositive, but it is an appropriate factor to consider.

#### Reduction of Fees Due to Partial Failure

As discussed above, authority has long made clear that a court may appropriately reduce awards based on partial failure. Respondent further notes, for comparison, that in *Dogwood II*, the above fees were reduced by 50% due to partial failure, while in *Del Puerto* the court reduced the claimed fees from 740.9 to 421. Petitioner disputes any reduction in fees due to partial failure but is not persuasive. The authority on which Petitioner itself relies, cited in both the Opening Brief at 14-14, such as *Roe v. Halbig, supra*, and in the O'Connor Dec., at ¶¶29-30, such as *Hensley, supra*, all expressly authorize reducing fees based on factors such as inefficiency and limited or partial success. Moreover, as explained below, in this instance, there is effectively one issue to segregate out as a failed issue for reducing the fees and it is one which is easily segregated due to the nature of the argument and the specific litigation involving it: the litigation over the Official Responses.

#### Failure of Litigation Regarding the Official Responses

The Court finds there to be a persuasive basis for reducing the recoverable fees based on the partial failure of Petitioner's claims, specifically the claims regarding the Official Responses. Not only did Petitioner fail on this issue, but it did so entirely. Moreover, this is also a very distinct issue, wholly separate in factual and legal analysis from the issues on which Petitioner prevailed. It is entirely distinct in its place in the underlying THP proceedings, coming at the end during the decision phase, and it addresses the procedural conduct at the final stage of the THP process, rather than the substantive merits of the THP itself. It also involved information outside of the administrative record, rather than analysis of the record before the agency. All of this means that the facts, evidence, and analysis regarding the Official Responses were wholly unrelated to the rest of the issues on which Petitioner did prevail. The claim regarding the Official Responses also involved its own separate, protracted litigation clearly distinct on the face of the record from the other issues on which Petitioner prevailed. The litigation over the Official Responses involved numerous motions, discovery, ex parte applications, and evidence, and even an additional brief specific to this issue. Accordingly, the Court finds it appropriate to exclude from the award those fees and costs which the Court may apportion to this issue.

Petitioner of course prevailed in the core arguments going to the substantive defects of the THP itself but its arguments regarding the Official Response failed entirely. This Court found Petitioner to be wholly unpersuasive on that issue, explaining that Petitioner had failed to cite *any* evidence or provide *any* analysis which could indicate that the error regarding the responses might have been prejudicial. The Court, in ruling on this argument, explained, in pertinent part,

Petitioner has cited *nothing* showing that the [initial] failure to publish the full 87-page set of responses, which Respondent did later publish... itself results in a prejudicial violation of CEQA. Although Respondent did not publish the full set of responses until... more than a month after the THP approval, *the evidence and the record demonstrate that Respondent in fact had prepared this complete set of responses prior to the approval*, but it simply had failed to publish the full set at the time of approval due to a clerical error.

...

Petitioner's argument *ignores the purpose, timing, and role of the responses, and it fails to take into account the specific facts of this case*.

The Court, in its lengthy discussion of this argument, explained why Petitioner's argument regarding the responses *wholly ignored both the facts of the case and purpose of the responses*. Moreover, at the merits hearing, the Court also heard and denied Petitioner's motion for evidentiary sanctions regarding the Official Responses. The Court explained that it found the motion *to be devoid of any evidentiary or legal support* and further explained that "this issue ultimately has no impact on the outcome of the petition. As this Court explains in the merits ruling, the tardy publication of the 87-page Complete Responses is ultimately immaterial."

The Court also noted that Petitioner had already entered into stipulations regarding the Official Responses which, at least in part, negated the very arguments which Petitioner was continuing to make.

In this Court's view, even if there had been a prejudicial error regarding the responses, it would at most have been a relatively minor procedural error. If prejudicial, the error might potentially have required Respondent to redo the final stages of the decision process, but inherently this was not an error going to the substantive validity of the THP itself or the sufficiency of its analysis.

Petitioner's argument over the Official Responses, in the Court's view, suffered from such clear weaknesses and limitations that there was little or no reasonable basis for believing it to have been worthy of significant time. Even if this was not clear at the start of the litigation, this became clear long before the completion of the litigation. The circumstances and record indicate that, at least after initially exploring it, Petitioner should have had little reasonable expectation of prevailing on it.

The stipulations noted above are in fact material to this Court's determination that Petitioner is not entitled to recover fees for that part of the litigation. As stated in the Court's October 14, 2022, order on Petitioner's motion to reopen discovery ("October 2022 Order"), the stipulations were as follows:

The parties on June 10, 2022, filed a "Stipulation Concerning Undisputed Facts" ("the Facts Stipulation"). The facts to which the parties stipulated, in brief, are:

1. Respondent staff member Shawn Headley ("Headley") states that on May 20, 2021, he used a Microsoft Word version of the "Official Response to Significant Environmental Points Raised During

the Timber Harvesting Plan Evaluation Process” to generate a PDF version of the 87-page version of the OR, last modified on April 13, 2021.

2. The first page of the 87-page Responses in Respondent’s paper file for the THP does not include an original signature stamp and Respondent cannot locate one which does.
3. Respondent cannot locate an 87-page paper version of the Responses signed on April 13, 2021.
4. On April 13, 2021, Headley used his computer to access the Microsoft Word version of the Responses, last modified on April 12, 2021 and in the Record at AR 304-390, used the print command to print a hard copy, picked up the printed copy from the printer, and used his signature stamp to sign the first page but did not confirm if all 87 pages of the Responses were included in that printed version, and Respondent cannot now confirm if they were.
5. The current paper version of the Responses at Respondent’s Santa Rosa office contains both a 25-page version added to the file on or about April 13, 2021, and an 87-page version added to the file on or about May 21, 2021.

On June 13, 2022, the parties stipulated to supplement the Record with bates-stamped pages CF 0000004858-4884 and the Court ordered the stipulation.

Petitioner entered into these stipulations at a time when the parties were prepared for a merits hearing and were even filing their opening briefs for the hearing. These stipulations also set the basic facts and framework of the analysis, providing all of the information needed to achieve the final conclusion. Petitioner therefore, by the end of June 2022, possess all of the information needed to make a full assessment of the validity of the argument over the Official Responses, and to have fully gauged the value of further litigation over it.

Petitioner should also have seen by that time that, even if it had prevailed on the argument, this argument would have added little or nothing to the end result. The issue was a far more limited, less fundamental, and more easily cured defect than the substantive issues on which Petitioner prevailed.

Despite these weaknesses and limitations, Petitioner devoted a substantial amount of time and energy, almost another entire year, litigating this one particular issue. Despite having already entered into the above stipulations, this involved lengthy litigation over discovery and the record, including several motions, ex parte applications, and missed deadlines. The litigation over the responses ultimately caused repeated delays, postponing the merits hearing by about a year. The parties filed their initial briefs for the merits hearing by the beginning of July 2022 yet, because of Petitioner’s persistence over this issue, the actual hearing did not take place until June 2023. This Court set forth much of the history of this litigation in detail in its October 2022 Order. The litigation continued for months even after the parties had filed their initial briefs for the merits hearing by July 2022. Of Petitioner’s 30-page Corrected Opening Trial Brief filed on June 27, 2022 for the merits hearing, Petitioner devoted 2 ½ pages to the issue of Official Responses, but it

continued to pursue litigation over the issue after this, with *all* of the subsequent litigation up until the long-delayed merits hearing being solely about the issue of the Official Responses. As part of this, Petitioner filed on January 5, 2023 another 6-page Opening Brief re Response to Public Comments, devoted to numerous complaints about the Court's handling of the litigation over the Official Responses and the importance of the issue. This litigation over the Official Responses also achieved nothing and, as explained, the record itself demonstrates that Petitioner was on notice that such a result was likely.

After the Court issued its ruling on the writ, despite having already prevailed on the core arguments regarding the substance of the THP, and despite having thus obtained a favorable judgment and writ directing Respondent to set aside its THP approval, Petitioner still decided to file an appeal which ultimately focused on the litigation regarding the Official Responses. Petitioner chose to do so despite having achieved its goal as a practical matter. In the end, Petitioner's appeal was wholly unsuccessful.

Accordingly, the Court mostly agrees with Respondent and RPI that Petitioner is not entitled to recover attorney's fees and costs for the failed arguments and litigation over the Official Responses. For the reasons set forth above, the Court finds it appropriate, overall, to exclude the litigation over the Official Responses from the compensable fees. At the same time, the Court does acknowledge that a party cannot necessarily know at the outset what claims or theories will prevail or fully gauge their likely validity initially. Therefore, the Court finds it appropriate to award Petitioner a small portion of the fees which relate to this issue, to reflect initial time and effort which may have been necessary for Petitioner to have reached a point where it could have a reasonable basis for judging the propriety of the further litigation on the point.

Apportioning the amount of fees and costs attributable to a failed portion of any litigation is, of course, not entirely easy or clear, but there is ample basis for making an apportionment here. This is due in part to the fact that between the preliminary injunction and the merits hearing, *all of the litigation*, including motions, ex parte applications, stipulations over the Official Responses, and continuances, *was specific to this issue*. This is in part also due to the fact that much of this litigation took place after the parties had already filed their opening briefs for the merits hearing, fully addressing all of the issues other than the Official Responses. This is also in part due to the fact that the analysis, evidence, and the discussion in the briefs, regarding the Official Responses is entirely separate and distinct from the rest of the arguments in the litigation.

Respondent and RPI also provide analysis and evidence demonstrating the number of hours attributable to this issue. The Greenfield Dec., from Respondent's expert on fees, explains that, of the 1,591.25 claimed attorney hours, Petitioner devoted about 1,038.75 hours to this issue. See also Respondent's Brief 17-19. This includes the discovery litigation, evidentiary motions, sanctions motions, ex parte applications, and continuances. *Ibid.*; Smith Dec., ¶28. This proportion is also consistent with this Court's own knowledge of the record of these proceedings. The record of the matters filed, the Court's

orders, and the record of the delays, is roughly consistent with this apportionment and, again, easily distinguishable from the record.

Petitioner relies in part on the O'Connor Dec., in which the expert declarant opines that the fees expended on this were reasonable. He describes what he calls Respondent's "gamesmanship relating to the administrative record" and in a fairly limited and conclusory discussion, asserts that Petitioner's efforts in discovery and litigation on the Official Responses were reasonable. For the reasons explained above, the Court disagrees with this assertion and finds O'Connor to be unpersuasive.

With respect to the portion of these fees for which Petitioner is entitled to compensation, the amount is limited for the reasons presented above. First, Petitioner had already engaged in some exploration and analysis of the issue of the Official Responses by the time it had filed its opening Brief in June 2022. As noted above, that brief already presented about 2 ½ pages of discussion on the issue. The Court is awarding Petitioner the full fees incurred up through that point, and therefore in that amount Petitioner is necessarily recovering some fees devoted to this issue already. The Court feels that Petitioner is entitled to some additional time beyond that. As is the case with other aspects of determining reasonable fees, this is not a clear issue. Based on the evidence presented regarding the billing combined with the discussion of the case presented above, the Court finds a limited additional compensable time to be about 80 hours. This reflects some portion of the hours incurred in the initial phases of the Official Responses litigation into initial discovery efforts, the stipulations, and analysis of the impact of the stipulations.

Therefore, on this basis the Court reduces the claimed fees by 958.75, to a total of 632.5 hours. The Court further notes that this amount is more consistent with the hours claimed in other CEQA litigation, as noted above.

#### Hours Claimed for Successful Claims

Respondent and RPI also assert that Petitioner has not demonstrated that all of the time spent on the successful, core environmental claims was reasonable and that the Court should therefore reduce the compensable hours further.

Of these, the Court only finds the opponents' arguments to be persuasive regarding the preliminary injunction. Petitioner appears to claim 153.45 hours for that motion, an inordinate amount of time for a matter which this Court considers to be fairly simple and straightforward. In the Court's view, there could have been little basis for denying such a motion, with the analysis in light of CEQA policies fairly standard and straightforward. To devote so much time to a preliminary injunction in this Court's view is patently unreasonable, far exceeding what such a motion typically requires even in a case as complex as a CEQA matter. Moreover, by comparison, in *Dogwood I*, the fees claimed for the injunction amount to about 43.6 hours while in *Dogwood II* they amount to about 80 hours. All three cases were very similar, dealing with THPs in the same general region and a specific subset of CEQA litigation which has been repeatedly

litigated in this county alone. As Respondent notes, Petitioner here relied on the same botanist who acted as expert for the *Dogwood* petitioners, further highlighting the standard, well-tired nature of the issues in the motion.

That said, the Court notes that there is also reasonable basis for being thorough in litigation and this Court will not lightly, or significantly, reduce fees simply because work may have gone over and above what might theoretically have been required. Unlike the Official Responses, it is also not easy here to apportion an amount which would clearly have been proper or improper. Therefore, the Court will reduce the fees for the preliminary injunction slightly, from 153.45 to 120, and it will not second guess other work claimed.

#### Resulting Total Compensable Hours

As a result of the above reduction in compensable hours, the Court finds that Petitioner is entitled to recover fees for 599.05 attorney hours, plus the full requested paralegal hours. The attorney time, to sum up, is the result of Petitioner's total claimed hours of 1,591.25 minus the 958.75 hours attributable to the Official Responses, minus 33.45 hours taken off the time for the preliminary injunction.

#### Fees for the Fees Motion

Petitioner also seeks 448.1 hours of attorney time and 5.3 hours of paralegal time for the fees motion. The paralegal time is limited and reasonable but, as Respondent and RPI argue, the attorney time requested for this motion far exceeds anything which this Court has seen or could possibly consider reasonable. Petitioner, in fact, claims about as much time for the fees motion as counsel devoted to the entire core of the merits litigation, not counting the Official Response issue. It also exceeds the total number of hours claimed in other CEQA litigation, such as the two *Dogwood* actions discussed above. The fact that the hours for the fees motion alone exceeds the total hours petitioners have claimed for entire CEQA litigation makes clear just how patently unreasonable this request is. Moreover, the amount is about 8-9 times the hours awarded on the fees motions in the two *Dogwood* actions, as comparison. Even though petitioner in those actions requested a greater fee award, even the requested amounts were far smaller than the hours claimed here. Regarding the fee motion in *Dogwood II*, for example, petitioner requested 37.9 hours for the moving papers and 54 for the reply, a total of just over 90 hours, far less than  $\frac{1}{4}$  of what Petitioner here seeks. The Court reduced the total award to about 54, hours, giving the full amount for the moving papers but only 16 hours for the reply. Petitioner's Counsel himself obtained in *Del Puerto* obtained an award for only 28 hours of time spent on the fee motion. Petitioner has, it is true, put together very lengthy briefs with much supporting evidence and several declarations, but this is not a sufficient basis for the award. First, the Court can find no way that the work presented could possibly have required 448 hours of attorney time. Second, the mere fact that Petitioner produced such a volume of supporting papers does not mean that the work was reasonably necessary and the Court here finds that the work presented far exceeds anything which was reasonably necessary to achieving the necessary results. Petitioner also includes in his request for the fee motion time

not even spent on the fee motion. This includes 32 hours spent drafting a letter related to the delays and uncivil bickering between the parties; 44.1 hours for the motion to reopen discovery which was actually part of the merits litigation regarding the Official Responses; and 23.5 hours spent preparing his numerous ADA accommodation requests seeking extensions of time to file briefs. The Court excludes all of these.

The Court finds it difficult to determine exactly the amount of time which could be reasonably included in the award for the fee motion but makes the following determination as its best interpretation of the reasonable amount. First, the Court deducts the unrelated time noted above, a total of 99.6 hours, as facially not recoverable and not part of the fee motion. This still leaves 348.5 hours. The Court finds that amount to be patently unreasonable and wholly disproportionate to the nature of the work involved in the motion or similar litigation. The Court reduces the amount sought for the fee award to 120 hours, an amount which this Court still believes too far exceed what this motion warranted or should require. Nonetheless, the Court is allowing a larger award out of a desire to avoid overly second guessing the nature of the work required.

### **Multiplier**

Petitioner requests a positive multiplier of 2.25 for the merits litigation and 1.5 for the fee litigation. It cites the fact that representation was contingent, the novelty of issues, degree of success, and the alleged incivility and intransigence of opposition counsel as well as “extraordinary difficulties.”

There is no dispute that application of multipliers in circumstances such as this, including the complicated realm of CEQA litigation, has long been considered appropriate depending on the circumstances of the case. This Court also notes that this is especially true in CEQA litigation, which is a complex and specialized area of the law, where the litigation serves to protect the public welfare with respect to not only the environment but also ensuring that government entities engage in responsible, informed decision making, and where petitioners generally can have no expectation of financial gain for the litigation.

That said, the Court finds the request for a 2.25 modifier for the merits litigation and a 1.5 modifier for the fees motion itself to be unreasonable and wholly unwarranted. Although a multiplier of 2 or more may be acceptable in certain circumstances, that is an unusually high multiplier for which there must be very good reason. Here, the Court can find nothing to support such a modifier.

Petitioner’s success in comparison to the time and effort spent was limited. Petitioner was extremely successful, as it argues, on the core arguments going to the environmental analysis in the THP, with the Court agreeing with Petitioner that the THP materially failed to comply with CEQA. However, Petitioner devoted inordinate time and effort to the issue of the Official Responses, with about 2/3 of the hours spent on that one, failed issue.

In addition, the Court finds nothing novel or unusually risky about the issues and arguments on which Petitioner prevailed. The Court acknowledges that CEQA litigation is complex and requires particular

knowledge and expertise in the field. It also acknowledges that Petitioner's Counsel demonstrated such expertise. Nonetheless, as this Court has already said, there have been a great many CEQA challenges to the sufficiency of Respondent's THP approvals in this county alone, not to mention the state, and these, from the Court's experience as seen in such litigation as the *Dogwood* cases, have generally involved the same types of issues and arguments, with the same general defects. Petitioner fails to demonstrate to the contrary, or that there was anything novel about these claims or the analysis in this case. Petitioner also fails to demonstrate that the analysis was unusually complicated or nuanced in comparison to other CEQA actions. As for the issue of the Official Responses, the Court acknowledges that that was an unusual and novel issue, but, as explained above, it was an argument which was in the end fundamentally flawed and wholly unsuccessful. It also resulted in great delays and additional litigation for something which produced no results whatsoever.

With respect to claims of uncivility and intransigence, the Court finds Petitioner to be wholly unpersuasive. Respondent and RPI are hardly entirely blameless in the history of delays, intransigence, and lack of civility which characterized this case, but, without going into sensitive details, the Court finds the greater share of the guilt on these points to lie with Petitioner. Respondent and RPI have noted and documented the incivility and intransigence on the part of Petitioner's Counsel in their papers and the Court has no wish to repeat the details here or expend further time and effort on this issue than is absolutely necessary, but suffice it to say that Petitioner's Counsel has demonstrated, as already noted and as he himself has expressly admitted in his own papers, a failure to act in a civil, professional manner during this litigation. Moreover, as also mentioned above and as discussed in this Court's prior orders such as the October 2022 Order, Petitioner's Counsel engaged repeatedly in conduct causing unnecessary delays, repeatedly failing to meet deadlines or comply with briefing schedules and hearing dates.

Finally, the Court finds no basis whatsoever for adding a positive multiplier to this fees motion. In other such motions and CEQA litigation, such as the *Dogwood* cases, petitioners have sought no enhancement multiplier for the work on the fees motion itself and this Court awarded such fees with no multiplier. The Court cannot see any basis whatsoever for applying a multiplier to this motion. The litigation on this motion is relatively standard, limited, and comes after success has already been achieved. It lacks the issues of risk and complexity which may justify a multiplier for the core litigation. Petitioner has failed to provide anything which could persuade the Court otherwise in this instance.

Accordingly, the Court will award Petitioner a multiplier, in light of the complexities, risks, and importance of this litigation, as well as the core success, but reduces the multiplier for the reasons stated above. The Court applies a positive multiplier of 1.4 for the merits litigation hours which the Court has found to be compensable. It applies no modifier to the hours spent on the fees motion.

### **Further Reduction or Negative Multiplier Due to Lack of Civility**

Respondent and RPI also argue that the Court should further reduce the award, or apply a negative multiplier, in part because of the lack of professional conduct or civility by Petitioner's Counsel. The Court has noted these issues above and has already taken this factor into account in making the determinations above. The Court will not further reduce the award or impose a negative multiplier.

### **Conclusion**

In the end, the Court GRANTS the motion but greatly reduces the amount sought. The Court does not reduce the hours or rate claimed for paralegal time and instead reduces only those only as to the attorney time. The Court reduces the attorney hourly rate from \$600 to \$525; reduces the attorney hours claimed for the merits litigation from 1,591.25 to 599.05; and reduces the attorney time for the fee motion from 448.1 to 120 hours. The Court applies a positive multiplier in favor of petitioner for the merits litigation but reduces the multiplier to 1.4. The Court applies no modifier to the fees phase of the litigation. This calculation of 599.05 hours at \$525 an hour with a multiplier of 1.4 gives an end result of \$440,301.75 in attorney fees for the merits litigation. The calculation of 120 hours at \$525 an hour results in \$63,000 for the fees phase. To this, the Court adds the full requested paralegal and law clerk fees of \$8,720. The Court will apportion 50% of the total to Respondent and 50% of the total to RPI.

Petitioner shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the Court in accordance with California Rules of Court, Rule 3.1312.